

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of SBC Communications Inc.)	
for Forbearance of Structural Separation)	WC Docket No. 02-156
Requirements and Request for Immediate)	
Interim Relief in Relation to the Provision)	
Nonlocal Directory Assistance Services)	

**WORLDCOM'S COMMENTS IN
OPPOSITION TO SBC'S PETITION**

WorldCom, Inc. (WorldCom) respectfully submits these comments pursuant to the Federal Communications Commission's (Commission) *Public Notice* released on June 25, 2002 (DA 02-1489).

INTRODUCTION

A Bell Operating Company (BOC) must provide nonlocal directory assistance (NDA) services through a structurally separate Section 272 affiliate, unless the Commission grants the BOC forbearance. The Commission has historically forbore from applying the requirements of section 272 to the BOCs' provision of NDA services, contingent on the BOCs compliance with the nondiscrimination requirements of section 272(c)(1).¹ The SBC Telcos that have been granted forbearance thus far, however, have

¹ Specifically, the Commission imposed the following requirements, the BOC must: "(1) make available to unaffiliated entities all of the directory listing information that they use to provide regionwide directory assistance service at the same rates, terms, and conditions they impute to themselves; (2) make changes to

not complied with the nondiscriminatory provisions the Commission outlined in its previous orders. Since SBC has demonstrated its failure to comply with the Commission's criteria for forbearance, the Commission should deny the SBC petition currently before it.

I. The Structural Separation Requirements of Section 272 Apply to A Bell Operating Company's Provision of Nonlocal Directory Assistance Services.

In its Petition SBC claims that forbearance is unnecessary, and that it is merely filing its petition "out of an abundance of caution," given the sunset provisions of Section 272(f).² Currently, none of the sunset provisions of section 272(f) would apply to Nevada Bell's provision of NDA services. Thus, Nevada Bell must provide this service through a structurally separate subsidiary, unless the Commission grants it forbearance.

The Commission has found that the BOC provisioning of NDA, under certain circumstances, constitutes an incidental interLATA service and therefore does not require section 271 approval. The Commission however clearly recognized that, without a grant of forbearance, the service must be provided through a separate subsidiary pursuant to section 272(a)(2)(B)(i).³ This section of the statute specifically relates to the provision of telecommunications services. This is consistent with Commission precedent of regulating directory assistance services as any other telecommunications service under Title II of the

their cost allocation manuals to reflect this accounting change; and (3) update and maintain the directory listing information they provide to unaffiliated entities in the same manner they update and maintain the directory information they use in the provision of nonlocal directory assistance services." *SBC NDA Forbearance Order*, CC Docket Nos. 97-172, DA 00-514, para. 15 (2000). Additionally, "[t]o the extent any BOC cannot make available to unaffiliated entities the directory listing information it uses in the provision of nonlocal directory assistance, it must cease these listings in its own provision of nonlocal directory assistance service." *Id.*, n. 44. *See also*, *US West NDA Forbearance Order*, CC Docket Nos. 97-172 and 92-105, FCC 99-133, para. 37 (1999).

² Petition, p. 1.

³ *US West NDA Forbearance Order*, para. 28. *SBC NDA Forbearance Order*, para. 2, n. 5.

Act.⁴ The sunset on the requirement that a BOC provision interLATA telecommunications services through a separate affiliate only takes effect three years after the BOC or its affiliate has been granted Section 271 authority for a particular state.⁵ SBC has not had Section 271 authority for three years for any state. Specifically, neither SBC nor Nevada Bell has even been granted Section 271 authority for the state of Nevada, so the sunset provision is not in effect.

If the Commission were to reconsider and classify the provision of NDA as an information service, and therefore subject to the separate affiliate requirement pursuant to section 272(a)(2)(C), then the Commission must also reconsider its decision concerning the BOCs use of the 411 dialing code. In the *N11 Order*, the Commission concluded that “a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of the enhanced services.”⁶ SBC and other BOCs currently

⁴ *In the Matter of Provision of Directory Listing Information Under the Communications Act of 1934, As Amended; The Use of N11 Codes and Other Abbreviated Dialing Arrangements; Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, CC Docket Nos. 99-273, 92-105, 92-237, FCC 01-384, para. 7 (2002); *See also, US West NDA Forbearance Order*, 14 FCC Rcd. 16284-86 (1999); *See also, N11 First Report and Order*, 12 FCC Rcd. 5572, 5600-01 (1997); *But see, In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, Order on Remand, CC Docket No. 96-149, para. 19 (2001)[The Commission found that the services referenced in section 271(g)(4) to be information services]. WorldCom concurs with the Commission’s DA specific findings that the provision of nonlocal DA should be classified and treated as a telecommunications service.

⁵ *See In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Notice of Proposed Rulemaking, WC Docket No. 02-112, para. 7, n. 19 (2002)[The sunset dates for each BOC will vary depending upon when each state receives section 271 approval. The earliest sunset is December 2002, which is the sunset date for Verizon’s New York section 272 requirements.]

⁶ *N11 First Report and Order*, 12 FCC Rcd. 5572, 5601. “The Commission has concluded that Congress sought to maintain the basic/enhanced distinction in its definition of “telecommunications services” and “information services,” and that “enhanced services” and “information services” should be interpreted to extend to the same functions.” *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace’ Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules In the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order,

provision their NDA service through the use of 411 or 1-411 dialing code, while not providing access to the 411 or 1-411 dialing code to all unaffiliated providers of NDA services. The Commission found the restriction in the *N11 Order* not to be applicable to the provision of NDA because it found NDA to be an adjunct-to-basic service, rather than an enhanced service.⁷ Consequently, if the Commission now finds NDA to be an information service, the restriction on the use of the 411 or 1-411 dialing code applies to the provision of NDA services.

II. SBC Has Not Complied With the Commission's Nondiscrimination Requirements.

The Commission granted SBC's petition for forbearance to allow Ameritech, Pacific Bell and Southwestern Bell Telephone Company (collectively SBC Telcos) to provide NDA services without complying with the separate affiliate requirements of Section 272. SBC is now seeking the ability to provide an integrated NDA service on behalf of Nevada Bell. Since SBC has demonstrated its refusal to comply with the Commission's stipulations for providing an integrated product the Commission should deny SBC's petition.

In the *SBC NDA Forbearance Order* the Commission allowed the SBC Telecos to provide NDA service on integrated basis, provided they make available to unaffiliated entities all of the in-region telephone numbers they use to provide NDA services *at the*

FCC 01-98, CC Docket Nos. 96-61 and 98-183, para. 4, n. 6, *citing Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd. 11501, 11516-17, 11520, 11524, paras. 33, 39, 45-46 (1998).

⁷ *US West NDA Forbearance Order*, para. 62. *But see generally, In the Matter of Directory Listing Under the Communications Act of 1934, as Amended; The Use of N11 Codes and Other Abbreviated Dialing Arrangements Administrations of the North American Numbering Plan*, Notice of Proposed Rulemaking, CC Docket Nos. 99-273, 92-105, 92-237, FCC 01-384 (2002).

same rates, terms, and conditions they impute to themselves.⁸ In most states, however, SBC is charging an above-cost “market-based” rate for directory assistance listings (DAL). Thus, SBC has not complied with the Commission’s mandate.

SBC only incurs the true economic cost to access DAL. Therefore SBC can only provide in-region telephone numbers at the same rate by providing it to unaffiliated providers at a cost-based rate. Charging unaffiliated providers a market-based price is inherently discriminatory. Consequently, as the California Public Utilities Commission recently concluded, market-based pricing for DAL is inconsistent with the Commission’s directives in the *SBC NDA Forbearance Order*.⁹

A cost study SBC submitted in a Texas arbitration proceeding revealed the cost-based rate per DAL to be less than one fifth of a cent (\$.0014).¹⁰ Nevertheless, SBC charges 40 times that amount in a number of states. With the exception of Texas, SBC charges between \$.02 and \$.0585 for DAL. Therefore SBC has not been providing in-region telephone numbers to unaffiliated DA providers at the same rate it incurs. Since SBC has demonstrated that it will not comply with the Commission’s mandate, the Commission should not grant SBC’s forbearance petition.

⁸ *SBC NDA Forbearance Order*, para. 2.

⁹ Before the Public Utilities Commission of the State of California, *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Decision 01-09-054, pp. 9-10 (Jan. 9, 2001).

CONCLUSION

The Commission should deny SBC's petition for forbearance.

Respectfully Submitted,

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July 12, 2002

¹⁰ See *Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996*, Arbitration Award, Public Utility Commission of Texas, pp. 13-14.

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify that on this twelfth day of July, 2002, I have caused a true and correct copy of the foregoing Comments of WorldCom in the matter of CC Docket No. 02-156 to be served electronically, or via first class mail, on the following:

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